

UNITED STATES STEEL CORP.

IBLA 80-697

Decided September 30, 1980

Appeal by United States Steel Corporation from a Colorado State Office, Bureau of Land Management, decision dismissing appellant's objections to the proposed new terms for coal leases CO 30344 and CO 30346 (contained in a "Final Notice of Readjustment"), because appellant filed its objections to the terms 3 days after the regulatory deadline.

Reversed and remanded.

1. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

In the context of a readjustment of the terms of a coal lease under the Mineral Leasing Act, the Bureau of Land Management erred in rejecting a lessee's attempts to negotiate the new proposed terms of a lease ripe for readjustment under the provisions of the Act solely on the ground that the lessee's objections to the proposed terms were received 3 days after the regulatory deadline.

APPEARANCES: Thomas R. Lloyd, Esq., for appellant United States Steel Corporation; and Ann Vance, Esq., Office of the Solicitor, for appellee Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On February 25, 1980, appellant United States Steel Corporation (USS), lessee of two Federal coal leases in Colorado, designated CO 30344 and CO 30346, received from the Colorado State Office, Bureau of Land Management (BLM), a final notice of readjustment regarding the

two leases. 1/ The notice provided that USS would have 60 days from receipt thereof in which to file objections to the proposed readjusted terms which were attached to the notice and that failure so to object would result in USS's being considered to have agreed and accepted such terms. 2/ Thus, according to the terms of the notice, USS's objections, if any, were due no later than April 25, 1980. In a letter dated April 17, 1980, and received by BLM on April 28, or 3 days beyond the expiration of the 60-day period, USS voiced its objections to a number of the proposed terms. 3/ In a decision dated May 8, 1980, BLM dismissed the objections as filed late. USS has appealed from that decision.

In its statement of reasons, USS advances two arguments for the reversal of the decision. First, it maintains that insofar as it mailed its objections before the expiration of the 60-day period, the grace period allowed in such situations by 43 CFR 4.401(a) should apply, and that therefore BLM should have considered the objections on their merits. Second, USS maintains that a reversal is in order because BLM has alleged no injury resulting from the untimely filing.

As BLM points out in its answer, 43 CFR 4.401(a) by its terms is applicable only to subpart E of 43 CFR Part 4 (Special Rules Applicable to Public Land Hearings and Appeals) and thus has no application to the mineral leasing regulations in Part 3450. While not directly responding to USS's other argument, BLM does argue that the notice clearly stated the consequences of USS's failure to file its objections in a timely fashion and that, after all, the notice language was taken from the regulation.

[1] While the Board cannot disagree with BLM that indeed there is no application of the grace period provision of 43 CFR 4.401(a) to this set of circumstances and that the notice clearly stated the consequences of untimely filing, justice requires that we take the

1/ Following the provisions of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. §§ 181-287 (1976)), USS had become the lessee of the subject leases on May 1, 1960. That Act and the regulations promulgated thereunder makes such leases subject to a readjustment of terms and conditions at the end of 20 years from the start thereof. 30 U.S.C. § 207 (1976), 43 CFR 3451.1(a). Thus, USS's leases were subject to readjustment as of May 1, 1980.

2/ This is in accord with the regulations covering the area. 43 CFR 3451.2(b). The notice also set out the procedures to be followed in negotiating the terms if USS chose to file objections.

3/ Insofar as April 25 was a Friday and April 28 the following Monday, the intervention of the weekend made the objections, in effect, only 1 day late.

inquiry beyond that point. The result BLM prays for seems unduly harsh in the circumstances. When a lessee files its objections to proposed new terms of a lease only 3 days (in effect, 1 day, see n.3) late, and the result of denying it access to negotiation of those terms is that it must live with terms it feels are offensive for 10 years (43 CFR 3451.1(a)), it is clear that the penalty does not fit the crime.

We are not unmindful of BLM's understandable desire to keep its records and procedures in order, but here there seems little relationship between that desire and USS's procedural failure, especially where USS apparently made an adequate attempt to file its objections timely and where the spirit of the statute and the regulations are so clearly in favor of allowing lessees to voice their objections and to negotiate terms and therefore not to be cut off unilaterally and arbitrarily from the process of changing terms of a lease occasioned by changing times. Additionally, as pointed out by USS, BLM has made no showing that its need for orderliness in the conduct of its business has been upset by USS's minor misconduct. 4/ In these circumstances, we feel we must reverse.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to the Bureau of Land Management for further proceedings not inconsistent with the views expressed herein.

Frederick Fishman
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

4/ See 43 CFR 1821.2-2(g) for another example of the Secretary's desire for fair dealing with late filed documents whenever that is possible.

ADMINISTRATIVE JUDGE GOSS CONCURRING:

Under 43 CFR 1821.2-2(g), the authorized officer should consider the documents as timely filed, unless one of the exceptions to that regulation is applicable.

Joseph W. Goss
Administrative

